



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

**OCT 26 2006**

4APT-PTSB

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Kerry F. Nelson, Attorney  
Balch & Bingham LLP  
30 Allen Plaza, Suite 700  
30 Ivan Allen Jr. Blvd., N.W.  
Atlanta, GA 30308

SUBJ: Docket No. FIFRA-04-2006-3028(b)  
STR Enterprises, Inc., and  
Rogers and Rogers Enterprises, Inc.

Dear Ms. Nelson:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 CFR Part 22.

Please make note of the provisions in Part IV of the Final Order, with respect to payment of the total assessed penalty of \$21,499 against your clients STR Enterprises, Inc., and Rogers and Rogers Enterprises, Inc. We request each payment be identified by writing the company name and FIFRA-04-2006-3028(b) on the face of the check. We look forward to getting updates on the Supplemental Environmental Project described in Attachment 1 of the CAFO.

Also enclosed, please find copies of the October 2001 *Enforcement Alert* titled "U.S. EPA Notifying Defendants of Securities and Exchange Commission's Environmental Disclosure Requirements." This document puts your clients on notice of their potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the EPA. Please note the contact phone number on page three of the Notice has been changed to (202) 551-3115.

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY REGION 4  
ATLANTA, GEORGIA

RECEIVED  
EPA REGION IV  
2006 OCT 26 PM 1:14  
HEARING CLERK

In the Matter of: )  
)  
STR Enterprises, Inc., and )  
Rogers and Rogers )  
)  
Respondents. )  
\_\_\_\_\_ )

Docket No. FIFRA-04-2006-3028(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (hereinafter "FIFRA"), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 CFR Part 22. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency (EPA), Region 4. Respondents are STR Enterprises, Inc., and Rogers and Rogers Enterprises, Inc.
2. Complainant and Respondents have conferred for the purpose of settlement pursuant to 40 CFR § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA to EPA Region 4 by EPA Delegation 5-14, dated May 11, 1994.
4. Pursuant to 40 CFR § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Cheryn Jones  
Pesticides Management Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960  
(404) 562-9006.

5. Respondents are STR Enterprises, Inc., and Rogers and Rogers Enterprises, Inc., and the corporations are incorporated in the State of Florida.
6. Each Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
7. On or about April 16, 2004, an authorized representative of the EPA conducted an inspection at Panhandle Pet Supply, 2870-C Industrial Plaza Drive, Tallahassee, Florida 32301.
8. During the aforementioned inspection, documentary samples of eleven Advantage and Frontline brand products were collected. EPA alleges that these products, as packaged and offered for sale at the above-referenced facility, were misbranded pesticides and were being offered for sale by the Respondent, Rogers and Rogers Enterprises, Inc.
9. On or about April 19, 2004, an authorized representative of the EPA conducted an inspection at Panhandle Pet Supply, 7929 Front Beach Rd., Panama City, Florida 32407.

10. During the aforementioned inspection, documentary samples of ten Advantage and Frontline brand products were collected. EPA alleges that these products, as packaged and offered for sale at the above-referenced facility, were misbranded pesticides and were being offered for sale by the Respondent, STR Enterprises, Inc.
11. It is a violation according to FIFRA § 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E), for any person in any State to distribute or sell to any person any pesticide which is misbranded.
12. EPA alleges that Respondent, STR Enterprises, Inc., violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136(a)(1)(E), on ten separate occasions and is, therefore, subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
13. EPA alleges that Respondent, Rogers and Rogers Enterprises, Inc., violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) on eleven separate occasions and is, therefore, subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
14. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.

### III. Consent Agreement

15. For the purposes of this CAFO, Respondents admit the jurisdictional allegations set forth above and neither admit nor deny the factual allegations.
16. Respondents waive their rights to a hearing on the allegations contained herein and their rights to appeal the proposed final order accompanying the consent agreement but reserve all rights to defend fully any enforcement, administrative or civil action by any third party, in connection with the factual allegations herein.

17. Each Respondent consents to the assessment of the civil penalties proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
18. Respondents agree to complete the Supplemental Environmental Project (SEP) set forth in this CAFO.
19. Respondents certify that, to the best of their knowledge and as of the date of execution of this CAFO, they are in compliance with all relevant requirements of FIFRA.
20. Compliance with this CAFO shall fully and finally resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of each Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against either Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement for any violations other than those alleged herein, and neither Respondent waives any rights to defend fully any such action.
21. Complainant and Respondents agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

IV. Final Order

22. Respondent, Rogers and Rogers Enterprises, Inc., is assessed a civil penalty of ELEVEN THOUSAND ONE HUNDRED SEVENTY-NINE DOLLARS AND FORTY-EIGHT CENTS (\$11,179.48), plus interest at two percent per annum, which is to be paid in quarterly installments, in accordance with the following schedule:

<u>DATE</u>	<u>AMOUNT</u>	
11/2/06 On or before October 31, 2006	\$1,424.04	✓ #515727
On or before January 31, 2007	\$1,424.04	✓
On or before April 30, 2007	\$1,424.04	✓ #3830 - 51107
On or before July 31, 2007	\$1,424.04	
On or before October 31, 2007	\$1,424.04	
On or before January 31, 2008	\$1,424.04	
On or before April 30, 2008	\$1,424.04	
<del>On or before July 31, 2008</del>	<del>\$1,424.04</del>	

23. Respondent, STR Enterprises, Inc., is assessed a civil penalty of TEN THOUSAND THREE HUNDRED NINETEEN DOLLARS AND FIFTY-TWO CENTS (\$10,319.52), plus interest at two percent per annum, which is to be paid in quarterly installments, in accordance with the following schedule:

<u>DATE</u>	<u>AMOUNT</u>
On or before October 31, 2006	\$1,314.50
On or before January 31, 2007	\$1,314.50
On or before April 30, 2007	\$1,314.50
On or before July 31, 2007	\$1,314.50
On or before October 31, 2007	\$1,314.50
On or before January 31, 2008	\$1,314.50
On or before April 30, 2008	\$1,314.50
<del>On or before July 31, 2008</del>	<del>\$1,314.50</del>

24. Respondents shall pay their respective penalties by forwarding a cashier's or certified check, payable to the "Treasurer, United States of America," to the following address:

U.S. Environmental Protection Agency  
Cincinnati Accounting Operations  
Mellon Lock Box 371099M  
Pittsburgh, PA 15251-7099

Each check shall reference on its face the name and the Docket Number of the CAFO ["STR Enterprises, Inc., and Rogers and Rogers Enterprises, Inc., FIFRA-04-2006-3028(b)"].

25. At the time of each payment, each of the Respondents shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960;

Cheryn Jones  
Pesticides Management Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960;

and

Saundi Wilson  
Office of Environmental Accountability  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960.

26. Respondents shall undertake and complete as a SEP the following projects within six months of the effective date of this CAFO:

- Develop a website containing information on FIFRA compliance;
- Prepare a "white paper" on FIFRA compliance to distribute to other members of the regulated community;
- Send an email newsletter containing a link to the website referenced above; and
- Publish advertisements in trade publications containing FIFRA compliance information.

The Respondents shall employ a consultant, with expertise in the area of FIFRA compliance, and legal counsel to prepare and review the above-referenced materials. The SEP is more specifically described in the attachment to this CAFO, Attachment 1, which is incorporated herein by reference.

The Respondents shall expend at least eighty thousand dollars (\$80,000.00) for the SEP. The Respondents shall maintain the above-referenced website for a period of at least one year.

27. A "Force Majeure" clause regarding the SEP is set forth herein.
- (a) If any event occurs which causes or may cause delays in the completion of the SEP as required under this Agreement, Respondents shall notify Complainant in writing not more than 10 days after the delay or Respondents' knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondents to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondents to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondents' right to request an extension of their obligation under this Agreement based on such incident.



(b) If the parties agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by circumstances entirely beyond the control of Respondents, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.

(c) In the event that the EPA does not agree that a delay in achieving compliance with the requirements of this Consent Agreement and Order has been or will be caused by circumstances beyond the control of the Respondents, EPA will notify Respondents in writing of its decision and any delays in the completion of the SEP shall not be excused.

(d) The burden of proving that any delay is caused by circumstances entirely beyond the control of the Respondents shall rest with the Respondents. Increased costs or expenses associated with the implementation of actions called for by this Agreement shall not, in any event, be a basis for changes in this Agreement or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

28. No later than forty-five (45) calendar days after the completion of the SEP, Respondents shall submit to EPA a SEP Completion Report. The Report shall be sent to the Pesticides Management Section, to the attention of Cheryn Jones, at the address provided above.

The Report shall include the following:

- (a) A complete description of the SEP as implemented;
- (b) An affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and

(c) Copies of appropriate documentation, including invoices and canceled checks, showing a total amount of EIGHTY THOUSAND DOLLARS (\$80,000.00), or greater, was spent on the SEP. Where appropriate, attorney-client privilege may be asserted.

Upon request, Respondents shall send EPA any additional documentation related to the SEP.

29. Respondents certify that, as of the date this CAFO is signed, they are not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondents further certify that, as of this date, they have not received and are not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.

30. Any public statement, oral or written, by Respondents making any reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of Section 12 of the Federal Insecticide, Fungicide, and Rodenticide Act."

31. In the event that Respondents fail to comply with any of the terms or provisions of this CAFO relating to performance of the SEP and/or to the extent that the actual expenditures for the SEP do not equal or exceed EIGHTY THOUSAND DOLLARS (\$80,000.00), Respondents shall be liable for stipulated penalties according to the provisions set forth below:

(a) Except as provided in Subparagraph (b) immediately below, if the SEP has not been completed satisfactorily, Respondents shall pay a stipulated penalty to the United States in the amount of FORTY-EIGHT THOUSAND THREE HUNDRED SEVENTY-FIVE DOLLARS (\$48,375.00). If no part of the SEP is performed and no good faith effort is made to perform the SEP, Respondents shall

pay a stipulated penalty to the United States in the amount of SIXTY-FOUR THOUSAND FIVE HUNDRED DOLLARS (\$64,500.00).

(b) If the SEP is not completed satisfactorily, but Respondents: (i) made good faith and timely efforts to complete the project; and (ii) certify with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondents shall not pay any stipulated penalty.

(c) If the SEP is satisfactorily completed, but Respondents spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of SIXTEEN THOUSAND ONE HUNDRED TWENTY-FIVE DOLLARS (\$16,125.00).

(d) If the SEP is satisfactorily completed, and Respondents spent at least 90 percent of the amount of money required to be spend for the project, Respondents shall not pay any stipulated penalty.

For purposes of this paragraph, whether the SEP has been satisfactorily completed in accordance with the provisions of this CAFO, including Attachment 1, attached hereto, and whether Respondents have made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

32. If Respondents fail to timely submit a SEP Completion Report as required by this CAFO, Respondents shall pay to the United States a stipulated penalty of \$100 for each calendar day the report is late.
33. Respondents shall pay any stipulated penalties that may accrue under this CAFO within fifteen (15) calendar days of the receipt by either Respondent of written demand from EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth above for the payment of the civil penalty.
34. For the purposes of state and federal income taxation, Respondents shall not be entitled, and agree not to attempt, to claim a deduction for any civil penalty payment made

pursuant to this CAFO and agree not to claim a tax deduction for the cost of the SEP.

Any attempt by Respondents to deduct any such payments shall constitute a violation of this CAFO.

35. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will, therefore, begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge of not more than six percent (6%) a year shall be applied on any principle amount not paid within 90 days of the due date accruing from the date the penalty payment becomes due and payable.
36. Complainant and Respondents shall bear their own costs and attorney fees in this matter.
37. This CAFO shall be binding upon the Respondents, their successors and assigns.
38. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

V. Effective Date

39. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

**STR Enterprises, Inc.**

By: [Signature] (Signature)  
 Name: Gregory Thompson (Typed or Printed)  
 Title: Vice President (Typed or Printed)

Date: 9/14/06

**Rogers and Rogers Enterprises, Inc.**

By: [Signature] (Signature)  
 Name: Tom Rogers (Typed or Printed)  
 Title: President (Typed or Printed)

Date: 9/14/06

**U.S. Environmental Protection Agency**

By: [Signature]  
 G. Alan Farmer, Acting Director  
 Air, Pesticides and Toxics  
 Management Division  
 61 Forsyth Street  
 Atlanta, Georgia 30303-8960

Date: 10/19/06

APPROVED AND SO ORDERED this 26<sup>th</sup> day of October, 2006.

[Signature]  
 Susan B. Schub  
 Regional Judicial Officer

In the Matter of:  
 STR Enterprises, Inc., and  
 Rogers and Rogers Enterprises, Inc.,  
 Docket No. FIFRA-04-2006-3028(b)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of STR Enterprises, Inc. and Rogers and Rogers Enterprises, Inc., Docket No. FIFRA-04-2006-3028(b), on the parties listed below in the manner indicated:

Cheryn Jones  
Air, Pesticides, and Toxics  
Management Division  
61 Forsyth Street  
Atlanta, GA 30303

(Via EPA's internal mail)

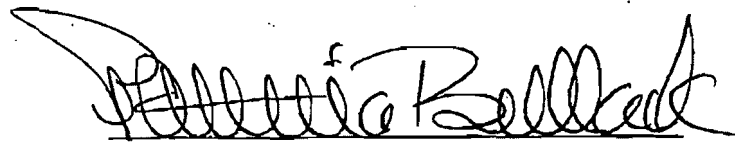
Michi Kono  
U.S. EPA, Region 4  
61 Forsyth Street  
Atlanta, GA 30303

(Via EPA's internal mail)

Ms. Kerry F. Nelson, Esq.  
Balch & Bingham LLP  
30 Allen Plaza, Suite 700  
30 Ivan Allen Jr. Boulevard, NW  
Atlanta, Georgia 30308

(Certified Mail Returned Receipt Requested)

Date: 10-26-06



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental  
Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9511

## ATTACHMENT I

### SEP Description - Additional Details

The SEP will specifically provide training and technical support to other members of the regulated community enabling them to identify, achieve, and maintain compliance with the FIFRA labeling, packaging, and registration requirements, including those set forth in Sections 3 and 25 of FIFRA, and applicable EPA regulations implementing such requirements, in 40 C.F.R. Parts 152, 153, 155-158, 162, and 167. The SEP will also provide training to educate the regulated community on what constitutes a "misbranded" pesticide as defined in Section 2(q) of FIFRA. Training will also be provided with respect to Sections 8 and 9 of FIFRA, and 40 C.F.R. § 169 (recordkeeping, inspections, and enforcement); Sections 13 and 14 of FIFRA (regarding EPA enforcement authority and civil and criminal penalties associated with FIFRA violations); and Section 17 of FIFRA, and 40 C.F.R. § 12.112 (concerning the import and export of pesticides and Notice of Arrival requirements).

Additional detail with respect to the SEP components is provided below. The substantive content of these components will be developed jointly by the Respondent and an outside contractor experienced in FIFRA, and will be reviewed by environmental lawyers at the Balch & Bingham LLP law firm.

#### 1. Creation and Maintenance of Original Content Website.

An original content website will be created, devoted to educating the public and regulated community with respect to compliance with pesticide registration, labeling, distribution, importation, sale and other requirements described above. The Respondents will employ the services of a website design and development team to generate an appropriate level of visits to the website. The Respondents' existing commercial website will refer all visitors to the SEP website, and will require visitors to view the SEP website prior to consummating any purchase of products from the Respondents' existing website.

In addition to text, the website will contain photographs and multimedia presentations highlighting the differences between properly branded and misbranded pesticide products, and educating the public and regulated community on how to identify and avoid the purchase, sale, importation, and distribution of such misbranded products.

#### 2. In-Store and Publication Advertising.

The Respondents will identify appropriate trade show and industry seminar materials, in addition to regularly-published industry magazines, in which to place no fewer than ten advertisements (at least one-half page each) covering one or more of the substantive topics above. In determining the most commonly-read publications and most

well-attended industry seminars, the Respondents will rely upon their knowledge of the industry and publication and subscription data obtained from one of their professional contractors. In addition, the Respondents will solicit input from members of the regulatory community, including the pesticide product wholesalers, retailers, distributors, and others maintained on their proprietary mailing lists. Each advertisement will refer the reader to the SEP website for more in-depth information, support, and training.

The SEP also will include the use of in-store displays that will cover one or more of the substantive topics above, together with references to the SEP website.

### 3. Preparation and Distribution of White Paper.

The Respondents' contractors, with assistance from the Balch & Bingham LLP law office, will prepare an original white paper that will be distributed by the Respondents' network of pesticide wholesalers and distributors. The paper will provide education and training with respect to each of the substantive topics identified above. It will be professionally printed for reproduction, and will be distributed by the Respondents to the Respondents' network of pesticide wholesalers and distributors, as well as to those on the Respondents' proprietary mailing lists and other appropriate recipients. The white paper will be enclosed with all products sold by the Respondents.

### 4. Newsletter Distribution to Proprietary Mailing List and Minority/Low Income Communities.

The SEP will include a newsletter for distribution to the proprietary mailing list. Additionally, the Respondents will further maximize the benefit of this component of the SEP by identifying one or more predominantly minority or low income communities within their retail service areas and will distribute one or more newsletters to addresses within such jurisdictions). According to the Respondents, minority and lower income households are more often victimized by the sales of unregistered, misbranded, and counterfeit products, typically without any inkling that such products are illegitimate and potentially harmful. The newsletters will alert the recipient members of these communities to the potential that they may encounter pesticide products on the open market that are sold in violation of FIFRA. The newsletters will also provide the recipients with training with respect to, among other things, how to verify the legitimacy of particular pesticide products, and the proper methods of disposal of illegitimate products.